



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/153260

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 31, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on January 16, 2014, at Waukesha, Wisconsin.

The issue for determination is whether petitioner is entitled to Replacement FS.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On October 24, 2013 petitioner applied to the agency for Replacement FS.
3. The agency contacted We Energies and confirmed that petitioner did not experience any power outages within the 10 days preceding her request for Replacement FS.



4. Petitioner's utilities were shut off from October 10-October 22, 2013 due to nonpayment of the utility bill.
5. On November 6, 2013 the agency issued a notice of decision to petitioner denying her request for replacement FS because petitioner did not experience any power outages within the 10 days preceding her request for Replacement FS.

### **DISCUSSION**

Replacement FS can be provided for food destroyed in a household misfortune up to the actual amount destroyed but not more than 1 month's allotment, or the amount that was actually issued to the household, whichever is less. See *FS Handbook*, §7.1.1.5, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>, and 7 C.F.R. § 274.6(a)(3). However, Replacement FS can be provided if a household reports the loss orally or in writing to the agency within 10 days of the date the loss occurred and completes a "Request for Replacement FoodShare Benefits" (F-00330). *Id.* Further, the agency must verify the household misfortune through the fire department, police department, a community organization such as the Red Cross, a collateral contact or home visit. *Id.*

The agency denied the Replacement FS because the collateral contact it made to We Energies showed that petitioner did not experience any power outages within the 10 days preceding her request for Replacement FS. Petitioner provided at hearing a letter from We Energies stating that her power was shut off from October 10-October 22, 2013 due to nonpayment of the utility bill. The agency maintained its position that this was not a reason to award Replacement FS.

As stated above Replacement FS can be provided for food destroyed in a household misfortune. The federal guidelines state that the agency must determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 7 C.F.R. § 274.6(a)(6)(ii). I must agree that failure to pay the bill is not a like event contemplated under these rules. Based on the evidence before me, I agree that the agency was reasonable in not replacing the FS. Therefore, replacement FS cannot be issued.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).

Petitioner was reminded at the close of the hearing that she can reapply for FS and the agency agreed to help her do so.

### **CONCLUSIONS OF LAW**

The agency was correct in denying Replacement FS to petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein is dismissed.



**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

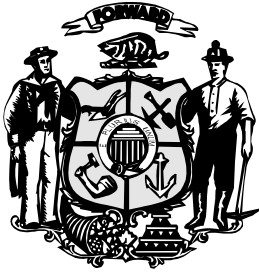
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of January, 2014

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\sKelly Cochran  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 16, 2014.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability